

REMARKS

Claims 1-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Salecker 5,309,595 in view of Block 6,448,732.

In the rejection, the Examiner stated that the patent to Salecker '595 discloses all of the recited subject matter with the exception of a battery-powered cleaner device comprising a motor that is DC and a rechargeable battery mounted on the frame for powering the DC motor. Applicants agree with the Examiner's assessment of Salecker '595 since Salecker '595 is a typical sewer and drain cleaner. Applicants do not claim to be the first inventors of a sewer and drain cleaner, but do believe that they are the first persons to provide a battery-powered sewer and drain cleaner.

The Examiner has attempted to combine the teachings of Block with the teachings of Salecker in an effort to make applicants' battery-powered sewer and drain cleaner obvious under 35 U.S.C. § 103(a). In an effort to justify the combination of Salecker and Block, the Examiner has brushed aside the fact that applicants' invention is a sewer and drain cleaner by stating that Block is a cleaner device. Block is a cleaner device, but it is a portable suction cleaner of the vacuum cleaner type. There is a vast difference between vacuum cleaners and sewer and drain cleaners. Vacuum cleaners remove materials from rugs or the like by suction while sewer and drain cleaners of the type herein loosen roots, obstructions, etc., within pipes through the use of a flexible plumber's snake which is rotated in the clogged pipes. It is therefore contended by applicants that Block is not analogous art. It is not believed that a person working in the sewer and drain cleaning art would look to the vacuum cleaner

1 art such as Block. Applicants' contention that Block is non-analogous art is borne out  
by the fact that the classifications of Block and Salecker are completely different as  
were the fields of search.

5 In determining the difference between the prior art and the claims, the question  
under 35 U.S.C. § 103 is not whether the differences themselves would have been  
obvious, but whether the claimed invention as a whole would have been obvious.  
Stratoflex Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). A  
prior art reference must be considered in its entirety, i.e., as a whole, including  
10 portions that would lead away from the claimed invention. W.L. Gore & Associates  
Inc. v. Garlock Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Distilling an  
invention down to the "gist" or "thrust" of an invention disregards the requirement of  
analyzing the subject matter "as a whole." *Id.*

15 Even more damaging to the Examiner's modification of Salecker is that the  
Examiner has failed to point out any suggestion or motivation to modify the reference  
in the manner suggested. MPEP § 2143.01. Obviousness can only be established by  
combining or modifying the teachings of the prior art to produce a claimed invention  
where there is some teaching, suggestion, or motivation to do so, found either  
20 explicitly or implicitly in the references themselves or in the knowledge generally  
available to one of ordinary skill in the art. *Id.* In Kotzab, 217 F.3d 1365, 1370, 55  
USPQ2d 1313, 1317 (Fed. Cir. 2000), the Federal Circuit decided that the control of  
multiple valves by a single sensor rather than by multiple sensors was a  
technologically simple concept. However, the Federal Circuit held that there was no

1 finding as to the specific understanding or principle within the knowledge of the skilled  
artisan that would have provided the motivation to use a single sensor as the system  
to control more than one valve. Id.

5 The mere fact that a reference can be modified does not render the resulting  
modification obvious unless the prior art also suggests the desirability of the  
modification. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). "A  
statement that modifications of the prior art to meet the claimed invention would have  
been 'well within the ordinary skill of the art at the time that the claimed invention was  
10 made because the references relied upon teach that all aspects of the claimed  
invention were individually known in the art' is not sufficient to establish a *prima facie*  
case of obviousness...." Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. &  
Inter. 1993).

15 Regarding the present invention, the Examiner has failed to show any  
suggestion or motivation to modify the Salecker reference. Therefore, applicants  
assert that the structure of claim 1 would not have been obvious to one having  
ordinary skill in the art at the time of the invention pursuant to 35 U.S.C. § 103(a).  
Applicants contend that the electrocution hazard involved with AC sewer and drain  
20 cleaners has been widely recognized for many years, but applicants are believed to be  
the first persons to ever develop a battery-driven sewer and drain cleaner such as set  
forth in claim 1. Suddenly, due to 20/20 hindsight, the Examiner believes that  
applicants battery-powered sewer and drain cleaner as set forth in claim 1 would have  
been obvious, although the Examiner has been unable to find a single piece of prior  
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1 art wherein a sewer and drain cleaner has been controlled and driven by a low voltage  
DC motor.

5 Claim 2 is dependent on claim 1 and adds the limitation thereto that the DC  
motor is operatively connected to the drum by a belt drive. Even though Salecker  
does teach that a belt drive is utilized, the motor of Salecker is not a DC motor.  
Inasmuch as neither Salecker nor Block even remotely suggest that a DC motor could  
be used on a sewer and drain cleaner of the type described, claim 2 is believed to be  
allowable over Salecker and Block. Claim 2 is also believed to be allowable for the  
reasons set forth with respect to claim 1.

10 Claim 3 depends from claim 1 and adds the limitation thereto that the DC motor  
is operatively connected to the drum by a gear drive. Inasmuch as Salecker does not  
teach a DC motor and does not teach that the drum could be driven by a gear drive,  
applicants submit that claim 3 is allowable over Salecker and Block inasmuch as there  
is absolutely no suggestion or teaching that the Salecker sewer and drain cleaner  
could be driven by DC motor which was operatively connected to the drum by a gear  
drive. Accordingly, claim 3 is believed to be allowable as set forth herein and for the  
reasons set forth above with respect to claim 1.

20 Claim 4 depends from claim 1 and adds the limitation thereto that the battery  
comprises a battery pack. There is absolutely no suggestion in Salecker that a sewer  
and drain cleaner could be driven by a DC battery, let alone a DC battery pack. The  
suggested modification of Salecker by means of the Block reference does not make  
applicants' structure obvious to a person having ordinary skill in the art at the time of

1 the invention under 35 U.S.C. § 103(a). Claim 4 is also believed to be allowable for  
the reasons set forth above with respect to claim 1.

5 Claim 5 depends from claim 1 and adds the limitation thereto that the DC motor  
comprises a high speed, high torque motor. There is no mention whatsoever in  
Salecker that the motor therein is a high speed, high torque motor. Further, there is no  
mention whatsoever in Block that the motor therein could be a high speed, high torque  
motor. Accordingly, as the references of record do not remotely teach or suggest that  
the Salecker machine could be battery-operated, there can be no teaching or  
10 suggestion that a DC motor could be used with a high speed, high torque motor. A  
high speed, high torque motor is necessary to achieve the proper drain cleaning  
function. Inasmuch as the prior art is devoid of any teaching that a sewer and drain  
cleaner could be battery-powered, there can be no teaching or suggestion that a DC  
motor would be a high speed, high torque motor. Therefore, the structure set forth in  
15 claim 5 is believed to be allowable over Salecker and Block. Claim 5 is also believed  
to be allowable for the reasons set forth with respect to claim 1.

20 Claim 6 depends from claim 1 and adds the limitation thereto that the battery-  
powered sewer and drain cleaner of claim 1 is a low voltage DC motor. Applicants  
incorporate the remarks set forth above in support of their contention that the use of a  
low voltage DC motor to power a battery-powered sewer and drain cleaner would not  
have been obvious under 35 U.S.C. § 103(a). Accordingly, claim 6 should be allowed.  
Claim 6 is also believed to be allowable for the reasons set forth with respect to claim  
25 1.

1           Claim 7 depends from claim 1 and adds the limitation thereto that the control  
includes a motor and voltage control. Again, there is absolutely no suggestion  
whatsoever in the references of record that a battery-powered sewer and drain cleaner  
could be controlled by a motor and voltage control mechanism. Therefore, claim 7 is  
5           believed to be allowable. Claim 7 is also believed to be allowable for the reasons set  
forth with respect to claim 1.

10           Newly added claim 8 depends from claim 1 and adds the limitation thereto that  
the motor has sufficient torque and shaft speed to rotate the drum at approximately  
230-350 rpm. Inasmuch as the references of record do not remotely teach or suggest  
that the Salecker machine could be battery-operated, there can be no teaching or  
suggestion that a DC motor could be used which is a high speed, high torque motor  
having sufficient torque and shaft speed to rotate the drum at approximately 230-350  
15           rpm. Therefore, the structure set forth in claim 8 is believed to be allowable over the  
references of record. Claim 8 is also believed to be allowable for the reasons set forth  
with respect to claim 1.

20           The foregoing has clearly shown that claims 1-7 are not rendered obvious  
under 35 U.S.C. § 103(a). Accordingly, the Examiner should withdraw the rejection  
and the claims should be allowed.

25           No fees or extensions of time are believed to be due in connection with this  
Amendment; however, please consider this a request for any extension inadvertently  
omitted and charge any additional fees to Deposit Account No. 502093.



Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that the original of this AMENDMENT for DAVID W. MANNING ET AL., Serial No. 10/624,360, was mailed by first class mail, postage prepaid, to Mail Stop Amendment, Commissioner for Patents, Alexandria, VA 22313, on this 11<sup>th</sup> day of October, 2005.

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